89-867

No.

Supreme Court, U.S.
FILED
DEC 1 1989
JOSEPH F. SPANIOL, JR.
CLERK

IN THE

Supreme Court of the United States

OCTOBER TERM, 1989

F. & H.R. FARMAN-FARMAIAN CONSULTING ENGINEERS FIRM and FAROUGH FARMAN-FARMAIAN,
Petitioners,

v.

HARZA ENGINEERING COMPANY,
Respondent.

PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE SEVENTH CIRCUIT

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QUESTIONS PRESENTED

1. Where a foreign government purports to confiscate a debt owed to one of its nationals by an American company with no assets in the confiscating country, so that the debt could not be converted to cash in the confiscating country, does the Act-of-State Doctrine compel recognition of the confiscation?

2. Where a court is asked to dismiss a contract case between two private parties on the ground that the lawsuit may adversely affect the foreign relations of the United States, may the court refuse to adjudicate the case on that ground in the absence of any expression of the Executive Branch's views?

RULE 28.1 LIST

For Petitioner F. & H.R. Farman-Farmaian Consulting Engineers Firm:

Parent: none

Subsidiaries (other than wholly-owned subsidiaries): none

Affiliates: The shareholders of petitioner F. & H.R. Farman-Farmaian Consulting Engineers Firm also owned all but one share of another confiscated Iranian firm, COMIRAN Consulting Engineers.

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PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE SEVENTH CIRCUIT

Petitioners respectfully pray that a writ of certiorari issue to review the judgment of the United States Court of Appeals for the Seventh Circuit in this case. Petitioners suggest that the Court hold this petition until it rules in *W.S. Kirkpatrick* v. *Environmental Tectonics*, No. 87-2066.

OPINIONS BELOW

The opinion of the court of appeals is reported at 882 F.2d 281; it is reprinted in the Appendix to this Petition (App. 1a). The opinion of the district court, not reported, is reprinted in the Appendix (App. 14a).

JURISDICTION

The judgment of the court of appeals was entered on August 17, 1989 (App. 12a). A timely petition for rehearing was denied on September 20, 1989 (App. 13a).

The jurisdiction of this Court is invoked under 28 U.S.C. § 1254(1).

STATEMENT OF THE CASE

Petitioners are an Iranian engineering firm (the Firm) and its managing director. Their suit was dismissed by the district court because of the Act-of-State doctrine, and the court of appeals affirmed the dismissal. Petitioners contend that the court below misapplied the doctrine and also erred in not seeking the views of the Department of State before concluding that allowing the case to proceed "would be a slap in the face of the Iranian regime" (App. 10a).

Respondent (Harza) is a consulting engineering company based in Chicago. In 1964, it entered into a "Collaboration Agreement" with the petitioner Firm for assistance in securing and carrying out contracts with Iranian government agencies. The Agreement provided that it was governed by the law of Illinois.

Major public works contracts were awarded to Harza. The Firm handled liaison between Harza and the contracting agencies and also provided staff and facilities in Iran and performed other consulting engineering services in Iran and Chicago. As provided in the Collaboration Agreement (including later supplements), the Firm's compensation was of several kinds: (a) various percentages of Harza's revenues, with certain funds to be deposited in a specific account in a Chicago bank in which the Firm had "an interest"; (b) sharing of profits and losses on certain projects; and (c) cost-plus reimbursement of certain expenses, including a specific *per diem* for services performed outside Iran by the Firm's principals (Complaint (R.1), Exh. A.2 Arts. IV.D and IV.G; Exh. A.5). Some payments were made in dollars, others in Iranian rials (*id.*, Exh. A.2 Art. IV.F; Exh. A.3; Exh. A.6 ¶ 4; Letters of Agreement attached to Hastings Aff. (R. 40)). All billing, accounting and other financial records were maintained by Harza in Chicago, and the

Firm's invoices were sent to Chicago (App. 2a; Declaration of Farough Farman-Farmaian (R. 29), ¶ 3; *see* R. 1, Exh. A.2 Arts. IV.E and V.H).[1]

By the time of the revolution in Iran in 1979, Harza had completed essentially all of its work in Iran and had left the country entirely. *Harza* v. *The Islamic Republic of Iran*, 11 Iran-U.S. Claims Tribunal Reports 76, 82, 129 (1986). On August 6, 1979, the revolutionary government appointed a "temporary director" to run the Firm, and in 1981 the government decreed that the Firm should be dissolved and a "Board of Liquidators" appointed.[2] *No compensation has ever been paid to the owners of the Firm for this seizure of the Firm by the Iranian government* (App. 3a).

In November 1981, Harza filed with the Iran-United States Claims Tribunal its claim for work that had been completed before it left the country and for which it had never been paid. *Harza* v. *Iran*, 11 Iran-U.S. Claims Tribunal Reports at 77-78. The Firm's managing director worked with Harza's executives and counsel in Chicago in assembling the claim, and the evidence submitted to the Tribunal included invoices for substantial amounts owed to the Firm for its work (Declaration of Farough Farman-Farmaian, ¶ 13). After an evidentiary hearing,

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[1] In certain respects, the bi-national nature of the parties' relationship is disputed by Harza, particularly with regard to the timing, duration and reasons for trips the co-petitioner made to Chicago. To support its position on the Act-of-State doctrine, Harza attempted to show that the parties' relationship had no "connection" with the United States. It was and is petitioners' position, however, that a court may not resolve factual disputes in favor of a party who has moved for summary judgment. *See, e.g., United States* v. *Diebold*, 369 U.S. 654, 655 (1962). As to these factual disputes, therefore, we rest on the contract documents and the declaration of the petitioner managing director. Under the legal test the lower courts should have followed, these factual disputes are not material.

[2] No liquidation of the Firm has been carried out.

Harza was awarded approximately $8.4 million, *Harza* v. *Iran*, 11 Iran-U.S. Claims Tribunal Reports at 137, which was duly paid to it, as is customary, by funds drawn on the Federal Reserve Bank of New York, *see* 47 Fed. Reg. 25243-44 (1982). *At no time during the Tribunal proceedings did the Iranian government, despite its previous confiscation of the Firm, make any counterclaim or demand any setoff for the portion of the claim that was attributable to the Firm's work. See Harza* v. *Iran, supra.*

When the petitioner's managing director asked Harza for the Firm's share of the Tribunal award, Harza refused to pay, citing the confiscation of the Firm by the Iranian government. Harza had never before taken that position.

Petitioners thereupon brought suit in the United States District Court for the Northern District of Illinois, invoking the court's diversity jurisdiction, to recover approximately $2 million under the Collaboration Agreement. Harza moved to dismiss or for summary judgment on the ground that the confiscation of the Firm's assets, including Harza's debt to the Firm, must be recognized by the court under the Act-of-State doctrine.[3] The district court granted the motion for summary judgment and dismissed the complaint. In so doing, it found, contrary to the Firm's contentions (and evidence), that "the United States has no connection to the relationship except that [Harza] has an office here" (App. 27a).

The court of appeals, in an opinion by Judge Posner, affirmed. It acknowledged that, in view of the confiscatory nature of the Iranian government's seizure of Harza's debt to the Firm, the Act-of-State doctrine would

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[3] The complaint and the summary judgment papers are reprinted in a major reporter on Iranian claims, 2 Mealey's Litigation Reports-Iranian Claims 641-42, 653-90 (July 3, 1987). The Iranian government has not sought in any way to intervene in this case.

not bar the suit if that seizure "could not be completed within the territory of the foreign sovereign" (App. 3a). Petitioners had contended, citing several Second and Fifth Circuit decisions, that seizure of the debt could not be completed in the foreign territory if, as was the case here, the debt could not be reduced to cash in that territory because the *debtor* (Harza) had no assets there. The court below, however, held that seizure of the debt was complete in Iran because the "assets and operations" of the *creditor* (the Firm) were in Iran and "all the services under the contract were to be performed in the foreign country" (App. 9a).[4] Although the court acknowledged that it is "unlikely that the claim will ever be pressed" by Iranian government officials, it concluded that the Act-of-State doctrine required the court to avoid "stepping on the State Department's toes" and to recognize the confiscation lest it deliver "a slap in the face to the Iranian regime" (App. 10a-11a).[5]

Petitioners filed a timely petition for rehearing. They urged that a court should not conclude that adjudicating the case would adversely affect the foreign relations of the United States without first asking the State Department for its views, as petitioners had previously suggested. The court denied the petition without comment (App. 13a).

REASONS FOR GRANTING THE WRIT

The Seventh Circuit's decision directly conflicts with decisions of other circuits as to the proper test for determining the situs of intangible property for purposes of the federal Act-of-State doctrine. The Seventh Circuit

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[4] Petitioners raised in the court of appeals its objection to resolving factual disputes in favor of a party (Harza) that has moved for summary judgment, but the court ignored the point.

[5] The court of appeals also raised *sua sponte* a question about whether the diversity jurisdiction of the district court had been properly invoked but decided, correctly, that it had been.

panel also erred in dismissing this action on the basis of a perceived impact on the foreign relations of the United States without any indication by the State Department that the suit would adversely affect the country's foreign relations. That is an issue that this Court now has under consideration.

I. THE SEVENTH CIRCUIT'S DECISION IS IN DIRECT AND IRRECONCILABLE CONFLICT WITH DECISIONS OF OTHER CIRCUITS AS TO THE APPLICATION OF THE ACT-OF-STATE DOCTRINE TO INTANGIBLE PROPERTY.

Confiscation of property by the state is, and has long been, "contrary to our public policy and shocking to our sense of justice and equity." *Vladikavkazsky Ry.* v. *New York Trust Co.*, 263 N.Y. 369, 378, 189 N.E. 456, 460 (1934). *See Bandes* v. *Harlow & Jones, Inc.*, 852 F.2d 661, 667 (2d Cir. 1988); *Maltina Corp.* v. *Cawy Bottling Co.*, 462 F.2d 1021, 1027 (5th Cir.), *cert. denied*, 409 U.S. 1060 (1972); *Republic of Iraq* v. *First Nat'l City Bank*, 353 F.2d 47, 51 (2d Cir. 1965), *cert. denied*, 382 U.S. 1027 (1966); *Zwack* v. *Kraus Bros. & Co.*, 237 F.2d 255, 259 (2d Cir. 1956).

For reasons of international comity and separation of powers, however, this Court has held that such confiscations, when perpetrated by foreign states *within their own territory*, must be given effect by United States courts. The Act-of-State doctrine, when it applies, prevents courts from questioning the validity of foreign confiscations, but the doctrine applies only insofar as the confiscations purport to affect property situated within the confiscating state's territory. When a foreign state purports to confiscate property situated beyond its territory, the doctrine has no application. The confiscating state's expectation of dominion over property situated outside its borders is attenuated and in any event is overridden by this nation's interest in protecting property situated here and the owner's expectation that his property situated in this country will be protected by this

country's laws and policies. *See, e.g., Maltina*, 462 F.2d at 1028-29; *Republic of Iraq*, 353 F.2d at 51-52.

The application of these principles to confiscations of tangible property is straightforward. In *Banco Nacional de Cuba* v. *Sabbatino*, 376 U.S. 398 (1964), for instance, this Court held that the courts must give effect to Cuba's expropriation of sugar that was situated in Cuba's territorial waters when Cuba expropriated it. Cuba clearly had "dominion over the property" and thus its confiscation could be "fully executed within the foreign state." *Id.* at 414-15. But, if Cuba were to attempt to expropriate, say, a building in New York, the courts in this country would not be constrained by the Act-of-State doctrine to give effect to such a confiscation.

This case, however, involves intangible property—a debt owed to a foreign national by an American firm. The Second and Fifth Circuits have long held that the situs of a debt for Act-of-State purposes is with the *debtor*. *E.g., Republic of Iraq, supra; Tabacalera Severiano Jorge, S.A.* v. *Standard Cigar Co.*, 392 F.2d 706, 715-16 (5th Cir.), *cert. denied*, 393 U.S. 924 (1968). More recently, however, the Ninth Circuit and the Seventh Circuit in this case have departed from this approach and have focused instead on the *creditor* and its activities.[6] This approach, as the Seventh Circuit appears to have recognized, significantly expands the scope of the Act-of-State doctrine. It therefore has the result of greatly extending the territorial reach of a foreign state's power to confiscate property and requires the courts of our country in a greater number of cases to lend their unquestioning assistance to states seeking to carry out such confiscations. There is thus a direct and irreconcilable conflict between the creditor-oriented test of the Ninth and Seventh Circuits and the debtor-oriented test followed in the Second and Fifth Circuits.

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[6] The Ninth Circuit case is *Tchacosh Co.* v. *Rockwell International Corp.*, 766 F.2d 1333 (9th Cir. 1985), which was followed by the Seventh Circuit in the decision below.

This Court has previously been made aware of the traditional debtor-oriented test, *see Alfred Dunhill of London, Inc.* v. *Republic of Cuba*, 425 U.S. 682, 687 (1976). On that occasion, the Court did not pass on its validity (having denied certiorari on the challenge to the use of the test, *id.* at 690 n.6). The Court has not had occasion in the last several decades to address squarely the application of the Act-of-State doctrine to confiscations of intangible property.

Without guidance from the Court, the lower courts will continue to render inconsistent holdings on this issue, reducing confidence in the ability of U.S. courts to vindicate property rights and creating uncertainty about the vulnerability to foreign seizure of debts owed by U.S. citizens or accounts in U.S. banks. Additionally, application of the novel approach adopted in this case will inevitably result in windfalls for certain classes of debtors like the respondent Harza.

A. The Conflict

1. *The Debtor-Oriented Test*

Applying a time-honored rule, our principal commercial courts of appeals have held, and continue to hold, that the situs of a debt for Act-of-State purposes is with the debtor. Traditionally, the situs of a debt for this purpose has been the state of the debtor's domicile or principal place of business. *See, e.g., Republic of Iraq, supra*; Restatement of Foreign Relations Law of the United States (Second) § 43 comment d (1965) ("Under the rules of conflict of laws normally applied in the United States, the situs of an intangible whose owner is domiciled outside the United States is the domicile of the debtor or issuer in the United States.").

The Second Circuit has long held that a debt's situs is with the debtor. As Judge Friendly explained in *Republic of Iraq, supra*, a debt cannot be said to be situated within

the expropriating state's territory for Act-of-State purposes if the debtor was domiciled and had its principal place of business in the United States and if it had no assets in the expropriating state at the time of the confiscation. 353 F.2d at 51. Under such circumstances, the foreign state does not have "dominion" over the debt because it is not in a position to "fully execute" its taking of the debt within its territory, *see Sabbatino*, 376 U.S. at 414-15, and the state is therefore forced to secure the assistance of the courts of this country to complete the taking. The Act-of-State doctrine does not require the courts of this country to allow themselves to be used by foreign states to effectuate their uncompensated takings. It requires acquiescence only in consummated takings. Other Second Circuit cases have reached similar results applying the debtor-oriented test, although sometimes describing the test in different terms.[7]

Likewise, the Fifth Circuit has long followed the rule focusing on the debtor and its contacts with the expropriating state. In *Tabacalera*, 392 F.2d at 715-16, the court echoed this Court's words in *Sabbatino*, 376 U.S. at 414-15, when it concluded that takings by a foreign government "are to be recognized under the Act of State Doctrine only insofar as they were able to come to complete fruition within the dominion of [the expropriating state]." The debt under consideration in that case was not situated within the territory of the expropriating

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[7] *See Menendez* v. *Saks & Co.*, 485 F.2d 1355, 1364-65 (2d Cir. 1973), *cert. denied in pertinent part*, 425 U.S. 991 (1976) ("For purposes of the act of state doctrine, a debt is not 'located' within a foreign state unless that state has the power to enforce or collect it. . . . [T]he power to enforce payment of a debt . . . generally depends on jurisdiction over the person of the debtor."); *United Bank Ltd.* v. *Cosmic International, Inc.*, 542 F.2d 868, 873-74 (2d Cir. 1976) (following *Menendez*); *Vishipco Line* v. *Chase Manhattan Bank, N.A.*, 660 F.2d 854, 862 (2d Cir. 1981), *cert. denied*, 459 U.S. 976 (1982) (following *Menendez*); *Bandes* v. *Harlow & Jones, Inc.*, 852 F.2d 661, 666-67 (2d Cir. 1988) (domicile of the debtor dispositive).

state because that state was not "physically" in a position to "change . . . the form of the asset from an account receivable to cash," 392 F.2d at 716, presumably because the debtor had no assets in Cuba at the time of the expropriation. *See also Maltina Corp.* v. *Cawy Bottling Co.*, 462 F.2d 1021, 1025-27 (5th Cir.), *cert. denied*, 409 U.S. 1060 (1972).[8] In other words, under the test to which the Second and Fifth Circuits have long adhered, the focus is on the debtor and its ties to the confiscating state.[9] Courts in the United States simply do not, under that test, lend their aid to a foreign state's attempt to confiscate intangible property if the confiscation could not have been completed within the foreign state's territory. It makes

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[8] In a quite different kind of case, the Fifth Circuit has reached the same result employing a somewhat different test. In *Callejo* v. *Bancomer, S.A.*, 764 F.2d 1101 (5th Cir. 1985), the debtors were Mexican banks in which American investors had made dollar deposits. The Mexican government promulgated exchange control regulations under which such deposits could be repaid only in Mexican pesos at specified exchange rates, which were unfavorable to the American investors. The Fifth Circuit held that the investors' suit against the banks was barred under the Act-of-State doctrine because the situs of the deposits was Mexico. *Id.* at 1121-25. The court believed that a modification of the traditional test was required in the context of the case because here "the situation is reversed: the foreign national is the debtor and the American national is the creditor." *Id.* at 1123. It therefore analyzed the "incidents of the debt" to determine whether the debt's ties to the foreign country were "sufficiently close that we will antagonize the foreign government by not recognizing its acts." *Id.* at 1124. Because the deposits were carried in Mexico, payment was to be made there, Mexican law was applicable, and the American banking system was not involved, the court concluded that the situs of the debts was with the debtor, *id.* at 1123-24—the same result it reached under the traditional rule. Neither the Seventh Circuit in this case nor the Ninth Circuit in *Tchacosh* relied on *Callejo* in formulating the test they applied to determine the situs of a debt owed by an American national to a foreigner.

[9] The courts in the Act-of-State context have uniformly rejected the rule sometimes applied in other contexts—that the situs of a debt is with the creditor. *See Menendez*, 485 F.2d at 1365.

no difference under this test that the creditor is not a United States national.[10]

Under this traditional rule, the Seventh Circuit would have had to conclude that the debt claimed by the Firm was situated outside Iran at the time of the purported expropriation: Harza, the debtor in this case, was domiciled and had its principal place of business in the United States and had no assets in Iran at the time of the expropriation. Iran therefore could not complete its confiscation of Harza's debt to the Firm within its own territory, and the court was not required by the Act-of-State doctrine to give extraterritorial effect to the confiscation.

2. *The Creditor-Oriented Test*

The Seventh Circuit in this case, however, adopted and applied a test focusing not on the debtor but on the confiscating state's relationship with the creditor and its activities that gave rise to the debt.

This new test was derived from the Ninth Circuit's recent decision in *Tchacosh*, 766 F.2d at 1337-39. At issue there was the Iranian government's purported expropriation of a debt owed by an American company to the Iranian plaintiff. The court expressly rejected the traditional debtor-oriented test because it believed that this test would render the Act-of-State doctrine a "nullity." 766 F.2d at 1338 n.6. This conclusion, however, was based on the court's fundamental misunderstanding of the test it rejected. The court apparently believed that the issue under the debtor-oriented test was whether *the U.S. courts* had jurisdiction over the debtor at the time suit was brought. *Id.* But, in fact, the question under that test is whether *the expropriating state* was in a position to exercise dominion over the debtor or its property at the

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[10] Many of the Second Circuit and Fifth Circuit decisions cited in this petition holding the Act-of-State doctrine inapplicable involved confiscations of the property of foreign nationals.

time of the confiscation. If it was, then the confiscation must be given effect even if a court in the United States had concurrent jurisdiction; if it was not, then the confiscation need not be given effect because the state was not in a position to "fully execute" the taking within its territory.

Having rejected the debtor-oriented test based on this misconception, the court in *Tchacosh* proceeded to adopt its polar opposite. Without grounding in case law or policy, the court shifted the focus of the inquiry from the *debtor* and its ties to the expropriating state to the *creditor* and its ties (or lack of ties) to the United States. Thus, the court held that the confiscatory act must be recognized because the creditor was a foreign national, its work and all invoicing and payment were all done in the foreign country, its contract was governed by the foreign state's law, and the debt's only connection to the United States was that the debtor was "incorporated under United States law and has a place of business in this country." 766 F.2d at 1338. Nowhere did the court explain why the factors it listed should have a bearing on the situs of the debt or on the principles that underlie the Act-of-State doctrine except to state that "the relations between [the creditor] and [the debtor] have a far greater impact upon Iran than upon the United States." *Id.*

Notwithstanding the faulty reasoning and lack of supporting authority of the *Tchacosh* decision, the Seventh Circuit in this case followed that holding. It perceived that the facts in *Tchacosh* were "almost identical to those of the present case," namely, that "the contemplated and actual operations of [the Firm] were confined to Iran," that the Firm "had no assets outside Iran," and that it "was seized in Iran pursuant to a locally valid Iranian law" (App. 9a, 11a). Obviously, however, this last "fact" regarding the lawfulness of the seizure under Iranian law is irrelevant, for (a) petitioners do not chal-

lenge the validity of the taking under Iranian law, but only its reach outside Iran, and (b) the contract between Harza and the Firm is by its terms governed by Illinois law. The second "fact" on which the Seventh Circuit relied—that the Firm "had no assets outside Iran"—merely begs the question *sub judice*; it has no bearing on the *resolution* of the question. The dispositive "fact" in Judge Posner's opinion, therefore, was that the creditor Firm's "contemplated and actual operations . . . were confined to Iran."

The Seventh Circuit's decision is in direct and irreconcilable conflict with the debtor-oriented rule. The Seventh Circuit acknowledged that the Second Circuit has rendered decisions that "look the other way" (App. 9a) (citing only *Bandes*, *supra*, and *United Bank*, *supra*), but it purported to distinguish those cases on the ground that "in each a shipment of goods to or from the U.S. was contemplated," whereas in this case "all services under the contract were to be performed in the foreign country" (App. 9a). This is not satisfactory. Neither the origin nor the destination of the purchased goods had any bearing on the reasoning of the court in either *Bandes* or *United Bank*. In fact, nowhere in the *Bandes* opinion is there any indication that the goods in question were shipped to or from the United States, and Judge Kaufman's opinion expressly gives the debtor's domicile as the basis of his conclusion: "H & J's Connecticut domicile places the situs of the H & J fund in the United States." 852 F.2d at 667. The court in *Bandes* cited three previous Second Circuit cases in support of this rule—including Judge Friendly's opinion in *Republic of Iraq*, which also gives no hint that the property involved in that case had anything to do with "a shipment of goods to or from the United States." *Id.*

In short, there is no way to reconcile the Ninth and Seventh Circuits' creditor-oriented approach with the debtor-oriented approach followed in the Second and Fifth

Circuits. The two approaches are squarely in conflict. Moreover, the twin effects of the rule of the Ninth and Seventh Circuits are (1) to expand greatly the application of the Act-of-State doctrine and (2) to give American debtors a windfall.

The subject matter is thus ripe for this Court's intervention.

B. The Significance of the Issue

As the cases cited above illustrate, the question of situs arises in Act-of-State cases with respect to numerous types of intangible property. The question has arisen in cases, such as this one, involving contractual or quasi-contractual debts. *Tabacalera*, *supra*; *Menendez*, *supra*; *Bandes*, *supra*. The question has arisen with respect to accounts receivable being held or collected by U.S. banks or agencies. *United Bank*, *supra*; *Rupali Bank* v. *Provident Nat'l Bank*, 403 F. Supp. 1285 (E.D. Pa. 1975). The question has arisen with respect to intellectual property rights, such as trademarks and copyrights. *Zwack*, *supra*; *Maltina*, *supra*; *Carl Zeiss Stiftung* v. *V.E.B. Carl Zeiss, Jena*, 293 F. Supp. 892 (S.D.N.Y. 1968), *modified on other grounds*, 433 F.2d 686 (2d Cir. 1970), *cert. denied*, 403 U.S. 905 (1971); *F. Palicio y Compania, S.A.* v. *Brush*, 256 F. Supp. 481 (S.D.N.Y. 1966), *aff'd* 375 F.2d 1011 (2d Cir.), *cert. denied*, 389 U.S. 830 (1967). And, perhaps most frequently in recent years, the question has arisen with respect to bank accounts or financial instruments. *Republic of Iraq*, *supra*; *Vishipco*, *supra*; *Garcia* v. *Chase Manhattan Bank, N.A.*, 735 F.2d 645 (2d Cir. 1984); *Perez* v. *Chase Manhattan Bank, N.A.*, 61 N.Y.2d 460, 474 N.Y.S.2d 689, *cert. denied*, 469 U.S. 966 (1984); *Compania Ron Barcardi, S.A.* v. *Bank of Nova Scotia*, 193 F. Supp. 814 (S.D.N.Y. 1961).[11] The conflict among the circuits will thus affect

[11] A bank deposit, of course, is nothing more than a debt. *See Vladikavkazky*, 189 N.E. at 459.

cases involving all of the foregoing types of intangible property. Until the Court addresses the point, courts in two circuits will come out one way, courts in the other two circuits will come out the opposite way, and other courts will have to choose between the two conflicting approaches.

The issue also arises in contexts other than outright expropriation by a foreign state. Of course, takings short of outright expropriations have long been the subject of litigation before the U.S. courts. *See, e.g., Bandes, supra; Menendez, supra; Tabacalera, supra* (all involving "interventions"). In recent years, numerous cases have been reported involving a foreign state's "taking" of property rights through amendment of its foreign-exchange regulations. *See West* v. *Multibanco Comermex*, 807 F.2d 820 (9th Cir.), *cert. denied*, 482 U.S. 906 (1987); *Allied Bank Int'l* v. *Banco Credito Agricola*, 757 F.2d 516 (2d Cir.), *cert. dismissed*, 473 U.S. 934 (1985); *Braka* v. *Bancomer, S.N.C.*, 762 F.2d 222 (2d Cir. 1985); *Libra Bank Ltd.* v. *Banco Nacional de Costa Rica*, 570 F. Supp. 870 (S.D.N.Y. 1983). The contexts in which allegations of foreign takings of property rights can arise are innumerable.

There is another important reason to clarify the situs issue. As Judge Friendly wrote in *Republic of Iraq*, confiscations of property are " 'contrary to our public policy and shocking to our sense of justice,' " and "[f]oreigners entrusting their property to custodians in this country are entitled to expect this historic policy to be followed save when the weightiest reasons call for a departure." 353 F.2d at 51-52 (quoting *Vladikavkazky*, 189 N.E. at 460). If the Seventh Circuit's decision is allowed to stand, however, this interest in protecting foreigners' reasonable expectations that their assets in this country will be protected against foreign seizure will have given way to a virtually irrebuttable presumption that a foreigner's intangible assets are freely subject to foreign seizure. As

noted, the dispositive "fact" in the Seventh Circuit's decision was that petitioner was "an Iranian firm the contemplated and actual operations of which were confined to Iran" (App. 11a). The Seventh Circuit also appeared to consider it important to the analysis that "[w]hat is at issue in this case is not the rights or interests of an American company . . . but the propriety of dealings between the Iranian government and an Iranian corporation." *Id.* The Seventh Circuit's xenophobic approach undermines the purposes of the Act-of-State doctrine's territorial limitation, as expressed by Judge Friendly. No other court has denied to foreigners, purely on the basis of their foreign nationality, the right to assert claims for debts owed to them by firms incorporated in the United States.

But the effects of the Seventh Circuit's rule would in the end be felt not by foreigners, but by American institutions. If the courts in this country hold that debts owed by U.S. citizens to foreign creditors, and foreigners' accounts in American banks, are freely subject to foreign confiscation, foreign investors can be expected henceforth to deposit their money in institutions in countries that protect their property from foreign seizure, and to enter into contracts with businesses from such countries. Intangibles are by definition highly movable assets, and investors base their investment decisions largely on the legal protections afforded these assets, as any Swiss banker can attest.[12] Unless this Court clarifies the circumstances under which such assets are subject to confiscation, foreign investors can be expected to choose to do business with institutions of countries that do clearly protect their intangible assets from foreign seizure.

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[12] It is no accident that the courts in the Second Circuit—the center of international banking and finance in this country—have been the most consistent in reaffirming the expectations that the traditional debt-situs rules were designed to create.

II. A COURT SHOULD NOT DISMISS A LAWSUIT BETWEEN PRIVATE PARTIES BECAUSE OF THE SUIT'S PERCEIVED IMPACT ON FOREIGN RELATIONS UNLESS THE STATE DEPARTMENT ADVISES THE COURT THAT MAINTENANCE OF THE LAWSUIT WOULD ADVERSELY AFFECT THE COUNTRY'S FOREIGN RELATIONS.

In the end, the Seventh Circuit rested its holding on the potential "slap in the face" of Iran that would be delivered if petitioners were permitted to maintain this suit. But Iran has given not the slightest indication that it believes it would be slapped in the face. To the contrary, Iran has shown that it has no interest in the sums claimed by petitioners and would not be offended in the slightest if petitioners were permitted to maintain the lawsuit. At least in cases such as this one, where a foreign state has plainly manifested a lack of interest in the subject of the suit, a court should entertain the action unless the Executive Branch advises the court that maintenance of the lawsuit would adversely affect the nation's foreign relations.

Iran's lack of interest in the subject matter of this case could not be plainer. Iran has had notice of the pendency of this lawsuit since mid-1987, *see supra* note 3. It has never even hinted that it considers itself the true owner of the funds claimed by petitioners or would otherwise be offended if petitioners were permitted to collect them. It has never made an attempt to intervene in this case to raise a claim to these funds. Indeed, Iran was for 4½ years involved in litigation against respondent in the Hague Tribunal relating to the very activities out of which respondent's debt to the Firm arose, and not once did Iran claim that it was the true owner of this debt. *See Harza* v. *Iran*, *supra*. Most important, *Iran itself actually paid over to respondent the very sums that respondent now claims are due to Iran rather than to petitioners.*

There are any number of possible reasons why Iran does not appear to be interested in this fund. Perhaps it recognizes that the debt in question was beyond its territory and thus not reached by its expropriation of the Firm. Perhaps the expropriatory decree under Iranian law did not purport to affect debts owed by foreigners. Perhaps Iran is under the impression that U.S. courts would not be hospitable to a taking of property without compensation. Or perhaps, having litigated against respondent and failed to raise any claim to this money, it now considers itself estopped to claim that the money it paid over to respondent was actually its own. Whatever the reason, the fact remains that Iran has claimed no interest in this fund. It is difficult to believe, therefore, that Iran would somehow be offended, or that the United States' relations with Iran would be even slightly affected, if petitioners were permitted to maintain this lawsuit.

At any rate, the courts are ill-suited to make determinations about a lawsuit's potential impact on U.S. foreign relations, including whether the lawsuit would be taken as a slap in the face of a foreign government (and whether, at this time, that matters). The branch of government to which these issues are entrusted is the Executive, and it should accordingly be the responsibility of that branch to call the court's attention to cases presenting the prospect of adverse foreign relations consequences. If the court perceives the possibility of such consequences and has doubts whether the Executive has been silent because it does not fear such consequences or simply because it has not focused on the lawsuit, the court should seek the Executive's views on the matter. Petitioners asked the court below to do so—twice—but the court did not do so, giving no reasons.

In *Sabbatino*, this Court declined to adopt a rule of the sort we propose here. 376 U.S. at 436-37. *But see id.* at 468-72 (White, J., dissenting) (espousing the rule

proposed herein). The Court then was proceeding on the Executive Branch's representation that it did not favor a procedure that called for it to inform courts of its views in Act-of-State cases. *Id.* at 436. But, in light of two decades of lower-court decisions applying the Act-of-State doctrine as enunciated in *Sabbatino*, the Executive has now modified its views. Concerned by the courts' excessive abdication of their duty to decide cases on the merits, the United States, in its *amicus curiae* brief submitted this term in *W.S. Kirkpatrick* v. *Environmental Tectonics*, No. 87-2066, has taken the following position:

> In general, . . . where application of the [Act-of-State] doctrine may turn on an assessment of the foreign policy interests of the United States, including an assessment of the impact of judicial proceedings in this country on the sensibilities of foreign nations, a court should not undertake to determine those questions for itself. Rather, as the district court did in this case, it should solicit the views of the Executive Branch in these matters, and should give those views the greatest deference in determining whether foreign policy concerns, together with considerations made relevant by other components of the act of state doctrine, require that the court give effect to the act of a foreign state.

Brief of the United States in *W.S. Kirkpatrick* v. *Environmental Tectonics*, No. 87-2066, at 32-33 (filed October 5, 1989). Similarly, the respondents in *Kirkpatrick* have urged the Court to hold that suits should not be dismissed on Act-of-State grounds unless the Department of State recommends that the suit not proceed for foreign policy reasons. Brief for Respondent in *Kirkpatrick*, *supra*, at 46-50 (filed October 5, 1989).[13] The Seventh

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[13] Respondents in *Kirkpatrick* have also urged a broader "reconsideration of—and redefinition of—the [Act-of-State] Doctrine." *Id.* at 46. If the Court in *Kirkpatrick* reconsiders or redefines the doctrine, as urged by respondent, petitioners here respectfully request that the Court summarily vacate the Seventh Circuit's

Circuit chose instead to make its own assessment of the sensibilities of Iran and the lawsuit's potential impact on U.S.-Iranian relations. Petitioners submit that courts have neither the expertise nor the capacity to make such assessments properly.

If this Court in *Kirkpatrick* adopts the rule suggested by the Solicitor General and the respondent in that case, petitioners respectfully request that the Court grant certiorari and summarily remand this case to the Seventh Circuit for reconsideration of the Act-of-State issue after obtaining the views of the Executive Branch. If the Court resolves *Kirkpatrick* without addressing the propriety of dismissing cases on foreign-relations grounds without obtaining the views of the Executive, petitioners request that the Court grant certiorari and consider the issue in this case.

CONCLUSION

The writ of certiorari should be granted and the judgment below should be reversed.

Respectfully submitted,

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December 1, 1989

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decision in this case and remand the case for reconsideration in light of *Kirkpatrick*.

APPENDIX

APPENDIX

IN THE UNITED STATES COURT OF APPEALS
FOR THE SEVENTH CIRCUIT

No. 88-3133

F. & H.R. FARMAN-FARMAIAN CONSULTING ENGINEERS FIRM and FAROUGH FARMAN-FARMAIAN,
Plaintiffs-Appellants,

v.

HARZA ENGINEERING COMPANY,
Defendant-Appellee.

Appeal from the United States District Court for the Northern District of Illinois, Eastern Division
No. 87 C 1599—JAMES B. PARSONS, *Judge*

ARGUED MAY 17, 1989—DECIDED AUGUST 17, 1989

Before WOOD, JR. and POSNER, *Circuit Judges*, and ESCHBACH, *Senior Circuit Judge.*

POSNER, *Circuit Judge.* This lawsuit—a bit of fallout from the Iranian Revolution—was filed under the alienage component of the federal diversity jurisdiction. 28 U.S.C. § 1332(a)(2). The plaintiffs are F. & H.R. Farman-Farmaian Consulting Engineers Firm ("Consulting Firm," for short), an Iranian corporation, and Farough

Farman-Farmaian, an Iranian citizen now resident in London. The defendant is Harza Engineering Company, a Delaware corporation whose principal place of business is in Chicago.

Before his ouster by the revolutionary regime, Mr. Farman-Farmaian was the Consulting Firm's managing director and a twenty percent shareholder. He is suing on his own behalf and that of the other owners of the firm—all of whom are members of the Farman-Farmaian family and all of whom gave him a broad power of attorney to prosecute this suit—to collect a debt of some $2 million that Harza allegedly owes the Consulting Firm for work that the firm did for Harza in Iran before the revolution. Harza moved for summary judgment on the ground that the act of state doctrine bars the suit. The district judge agreed; and although the judgment order recites that it is dismissing the complaint, the judge's intent to dismiss the entire suit is plain, which is enough to satisfy the final-decision rule of 28 U.S.C. § 1291. See, e.g., *Bethune Plaza, Inc. v. Lumpkin*, 863 F.2d 525, 527-28 (7th Cir. 1988). But we repeat our plea that district courts head off spurious issues of appellate jurisdiction by complying with the letter of Rule 58. See, e.g., *Coniston Corp. v. Village of Hoffman Estates*, 844 F.2d 461, 463 (7th Cir. 1988).

Harza, beginning in the 1960s, had become the prime contractor on a number of major water development projects in Iran, and had engaged the Consulting Firm to perform services for it in connection with these projects. The record does not disclose the nature of the services but all were performed in Iran. The Consulting Firm mailed the invoices for these services to Harza's headquarters in Chicago. Harza had no office in Iran, although the director of its Iranian projects frequently visited Iran for extended periods and while there had the use of an office that the Consulting Firm provided. Harza paid the Consulting Firm's invoices sometimes in dollars but

usually in Iranian currency, and the Consulting Firm deposited all the payments in Iranian banks. Just as Harza had no office in Iran, the Consulting Firm had no office in the United States. The only officer or employee of the firm ever to visit Harza's office was Mr. Farman-Farmaian himself, who had family in Chicago.

In 1979 the revolutionary government seized the Consulting Firm and the next year Harza stopped doing business with Iran because the Iranian government refused to pay Harza's bills. Later the Iranian government decided to dissolve the Consulting Firm—without paying any compensation to its owners—and a board of liquidators was appointed. By this time most of the Farman-Farmaian family wisely had left Iran.

Years later Harza obtained an award from the Iran-United States Claims Tribunal for services rendered to the Iranian government before the Revolution. The plaintiffs claimed that under Harza's contract with the Consulting Firm some $2 million of the Claims Tribunal's award was due to them for services the Consulting Firm had rendered Harza on projects covered by the award. When Harza refused to pay, the plaintiffs filed this suit. Neither the board or liquidators nor any other representative of Iran has filed a claim to the $2 million.

The plaintiffs argued in the district court that the seizure of the Consulting Firm violated Iranian law, but they have abandoned that contention (which the district judge had rejected) on appeal. And they concede that the act of state doctrine generally forbids an American court to question the act of a foreign sovereign that is lawful under that sovereign's laws. To defeat Harza's act-of-state defense they invoke the "extraterritorality" exception. Well discussed in *Tchacosh Co. v. Rockwell International Corp.*, 766 F.2d 1333, 1336-37 (9th Cir. 1985), the exception lifts the bar to suit in cases in which the act of state (1) is confiscatory, and hence contrary to strong American public policy, yet (2) could not be completed within the territory of the foreign sovereign. It

is the second element of the exception that is at issue in this appeal; the first is not contested. See, e.g., *Republic of Iraq v. First National City Bank*, 353 F.2d 47, 51-52 (2d Cir. 1965) (Friendly, J.). What the revolutionary government confiscated was the Consulting Firm's claim against Harza for payment for the services the firm had rendered Harza before the firm was seized and its property confiscated. The plaintiffs argue that the revolutionary government could not seize this claim because the debt giving rise to it was "in Chicago" rather than "in Iran."

Before addressing the merits we must determine whether there is federal jurisdiction. The rule of complete diversity—that no plaintiff and no defendant may be a citizen of the same state—applies to alienage cases as well as to ordinary diversity cases. *Newman-Green, Inc. v. Alfonzo-Larrain*, 109 S. Ct. 2218, 2221 (1989). The Consulting Firm is an Iranian corporation and Mr. Farman-Farmaian is also an Iranian citizen, while Harza is for purposes of the diversity jurisdiction a citizen of both Delaware and Illinois. See 28 U.S.C. § 1332(c). So far, so good. The problem is that Mr. Farman-Farmaian is suing not only on his own behalf but also on behalf of the firm's other shareholders, and the pleadings do not indicate their citizenship. Supplemental briefs on jurisdiction filed at our request reveal that one of the shareholders is an Illinois citizen and was at the time the suit was filed. If she is considered a plaintiff, complete diversity is lacking, and with it federal jurisdiction.

Ordinarily the relevant citizenship for diversity purposes is that of the named plaintiff rather than that of the persons on whose behalf he is suing. Obviously this is true of a suit by a corporation—the corporation is the "person" whose citizenship counts, not the shareholders. It was true of suits by trustees and executors, see *Navarro Savings Ass'n v. Lee*, 446 U.S. 458 (1980); *Mecom v. Fitzsimmons Drilling Co.*, 284 U.S. 183, 186 (1931),

until the enactment last year of 28 U.S.C. § 1332(c)(2). It is true of class actions—only the citizenship of the named plaintiffs matters for diversity purposes. See *Snyder v. Harris*, 394 U.S. 332, 340 (1969); *In re "Agent Orange" Product Liability Litigation*, 818 F.2d 145, 162 (2d Cir. 1987). And—a close analogy to the present case—it is true of stockholder derivative suits; the citizenship of the named plaintiff is all that counts even though he is suing on behalf of the corporation. See *Doctor v. Harrington*, 196 U.S. 579 (1905); *Venner v. Great Northern Ry.*, 209 U.S. 24 (1908); *Van Gelder v. Taylor*, 621 F. Supp. 613, 621 (N.D. Ill. 1985). On the other hand, the citizenship of a partnership is the citizenship of all the partners, not just of the general partner, despite the close analogy between limited partners and corporate shareholders. So at least we held in *Stockman v. LaCroix*, 790 F.2d 584, 587 (7th Cir. 1986), and *Elston Investment, Ltd. v. David Altman Leasing Corp.*, 731 F.2d 436 (7th Cir. 1984), although there is a conflict among the circuits on the question which the Supreme Court has granted certiorari to resolve. See *Arkoma Associates v. Carden*, 874 F.2d 226, 228 (5th Cir. 1988), cert. granted, 109 S. Ct. 1106 (1989). In distinguishing the partnership case we pointed out in *Elston* that a partnership has no legal identity separate from that of the partners. See 731 F.2d at 438. This distinction invites the following generalization: in deciding whether the required diversity is present, the court will confine inquiry to the citizenship of the named parties. If there is the required complete diversity of citizenship among them, the question whether the suit can be maintained will depend on whether the named parties are the real parties in interest and whether any indispensable party has been left out. See Fed. R. Civ. P. 17(a), 19(b).

Under this approach, since Mr. Farman-Farmaian is a named plaintiff but the other owners of the Consulting Firm are not, the citizenship of the other owners is ir-

relevant. True, Mr. Farman-Farmaian's representative capacity is *sui generis*. He is not a trustee or guardian of the other shareholders, nor is this a class action or a stockholders' derivative suit. And the plaintiffs sensibly do not argue that the grant of a power of attorney makes the grantee rather than the grantor the party for purposes of determining whether there is diversity—a position that would as a practical matter enable any suit to be maintained as a diversity suit. There is, however, an analogy between this case and the creditor's bill, an old form of class action in which one creditor sued a debtor as representative of all the debtor's creditors and the proceeds of the suit were divided among those creditors who filed an appearance. See *In re American Reserve Corp.*, 840 F.2d 487, 490 (7th Cir. 1988). Even if the analogy is rejected, and with it Farman-Farmaian's representative status, all that this would mean is that he might not be able to sue on behalf of the other owners. He could still sue in his own right as a twenty percent shareholder, for no one argues that the other owners are indispensable parties to this suit.

If all this is wrong, still the Supreme Court's recent decision in *Newman-Green* authorizes us to drop a party at the appeal stage in order to preserve diversity jurisdiction. The plaintiffs invite us to drop Mr. Farman-Farmaian, the individual party, if we have any doubts about jurisdiction with him in the case. With him dropped, this would just be a suit between an Illinois corporation and a foreign corporation. As a matter of fact we can think of no reason other than caution why the plaintiffs' counsel thought he needed an additional plaintiff besides the Consulting Firm. The debt is owed by Harza to the firm, not to the firm's owners and not to the firm's managing director and attorney-in-fact (in the power-of-attorney sense), Farough Farman-Farmaian. It is true that the owners have been ousted and have no desire to see the debt paid to the liquidators in Iran, but on

the other hand they cannot succeed in this suit unless they show that the court should disregard the seizure in adjudicating the Consulting Firm's claim against Harza. And if the seizure is disregarded for these purposes, then it is the former owners and not the liquidators who will enjoy the benefit of the judgment, since any money judgment rendered in this suit would be paid to Farman-Farmaian as the managing director of the pre-seizure Consulting Firm.

The principle that underlies (or perhaps merely restates) this conclusion is that corporations expropriated abroad continue to exist with capacity to sue in the United States, provided of course they can show that the court can disregard the expropriation without violating the act of state doctrine. The principle was clearly stated by Chief Judge Cardozo in *Petrogradsky Mejdunarodny Kommerchesky Bank v. National City Bank*, 253 N.Y. 23, 28, 170 N.E. 479, 481 (1930), and even more clearly in a slightly later decision by the New York Court of Appeals, *Vladikavkazsky Ry. v. New York Trust Co.*, 263 N.Y. 369, 378-79, 189 N.E. 456, 460 (1934). It is implicit in a number of other cases as well—in particular *Baglin v. Cusenier Co.*, 221 U.S. 580, 594-97 (1911); *Tabacalera Severiano Jorge, S.A. v. Standard Cigar Co.*, 392 F.2d 706 (5th Cir. 1968); *Compania Ron Bacardi, S.A. v. Bank of Nova Scotia*, 193 F. Supp. 814 (S.D.N.Y. 1961). The principle is obscured because ordinarily, as here, an owner, assignee, or representative is named as a plaintiff in order to obviate disputes over the corporation's capacity arising from the ambiguous status created by the expropriation. See, e.g., *Tchacosh Co. v. Rockwell International Corp.*, *supra*, 766 F.2d at 1335. But the soundness of the principle cannot be doubted after the rejection, in such cases as *Maltina Corp. v. Cawy Bottling Co.*, 462 F.2d 1021 (5th Cir. 1972), of the proposition that "a foreign sovereign's dissolution of its own corporation is dispositive of the corporation's power to exercise dominion over assets located within the United States simply because the dissolution of

the corporation is an 'act of a foreign state, done within its own territory.'" *Id.* at 1026. The rejection of this proposition *is* the extraterritoriality exception to the act of state doctrine; and unless it is rejected, the plaintiffs could not win this case even if all the owners of the Consulting Firm were named as plaintiffs. (The asset claimed to be "located in the United States" is the debt of Harza to the Consulting Firm.)

So, to conclude on the jurisdictional issue, we do not think the citizenship of the persons represented by Mr. Farman-Farmaian is material, but if this were determined to be wrong we would drop him as a plaintiff to preserve jurisdiction and there would be no effect on the merits. Of course a dismissal of Mr. Farman-Farmaian on jurisdictional ground would, unless denominated with prejudice, leave him free in principle to bring a fresh suit in state court; a dismissal on the merits would not. But as in *Newman-Green* fairness to the other side would dictate dismissal with prejudice; the power to dismiss parties to preserve jurisdiction should not be used to give a dismissed party a second bite at the apple. So the alternative jurisdictional approaches that we have examined really would have the same practical consequences.

We come at last to the merits. The exception to the act of state doctrine on which the plaintiffs rely requires that the act of confiscation not have been complete within the confiscating state. Equivalently, if a foreign state has made a confiscatory "taking," an act offensive to American proprieties, American courts will not lend their assistance to making the confiscation effective. So if the Consulting Firm had assets in Chicago, and the Iranian board of liquidators brought suit here to obtain control of those assets in conformity with the Iranian decree seizing the firm, the suit would fail. See, e.g., *Bandes v. Harlow & Jones, Inc.*, 852 F.2d 661, 666-67 (2d Cir. 1988); *United Bank Ltd. v. Cosmic International, Inc.*, 542 F.2d 868 (2d Cir. 1976). But it is the exception that fails if the confis-

cation was complete within the foreign state in the sense that all of the firm's assets and operations were there, and the victim is trying to get an American court to undo the confiscation. That is this case. The Consulting Firm was an Iranian company all of whose assets and operations were in Iran; the revolutionary regime seized the firm and its assets; one of those assets was the firm's claim against Harza for payment for the services that the firm had rendered Harza in Iran. The *Tchacosh* case, cited earlier, rejected the extraterritoriality exception to the act of state doctrine on facts almost identical to those of the present case. The two Second Circuit decisions that we have cited, *Bandes* and *United Bank*, look the other way, but are distinguishable because in each a shipment of goods to or from the U.S. was contemplated. In this case, all the services under the contract were to be performed in the foreign country.

Granted, to describe the Consulting Firm's claim for payment of Harza's debt to it as an asset located in Iran, as we have done, may be thought to beg the question. A debt (like a word, a number, an idea) has no space-time location; it is not a physical object, and efforts to treat it as such, like efforts in conflicts of law jurisprudence, now largely abandoned, see, e.g., Restatement, Second, Conflict of Laws, § 188 (1971), to find the site of a contract, seem bound to fail. Cf. Leflar, American Conflicts Law § 183 (1977). This acknowledgment does not much help the plaintiffs, though, since they argue that the debt was "in" Chicago—a clearly untenable proposition. Harza's liability was the Consulting Firm's asset, and it is strange to describe the Consulting Firm as having an "American" asset by virtue merely of having a claim against an American company for services performed on that company's behalf in Iran.

The metaphysics and semantics of the issue to one side, the plaintiffs' submission that the debt is located in Chicago would if accepted greatly reduce the accepted scope

of the act of state doctrine—a pertinent although not necessarily a controlling consideration. A dispute between an Iranian corporation doing business entirely in Iran, and the government of Iran, could pop up in an American court merely because the corporation was owed some money by an American firm. In response to Harza's expression of concern that if it pays the Consulting Firm it may be faced with a claim for the same amount by the Iranian liquidators, the plaintiffs argue that Harza could have interpleaded the Iranian liquidators. Exactly so; and then this court would have been required to determine the legality under Iranian law of the seizure of an Iranian company in and by Iran.

It is just such litigation that the act of state doctrine seeks to keep out of our courts in an effort to minimize interference with the foreign relations of the United States, the conduct of which has been lodged elsewhere in the government. What is at issue in this case is not the rights or interests of an American company (Harza is American, but its only interest is in avoiding double payment, and is protected by applying the act of state doctrine to bar this lawsuit) but the propriety of dealings between the Iranian government and an Iranian corporation. With the American interest so attenuated, considerations of comity—that is, of sensitivity to the potential frictions between proud sovereigns—come to the fore; and it is those considerations, and the resulting concern with the judiciary's stepping on the State Department's toes, that inform the modern understanding of the act of state doctrine. See, e.g., *Banco Nacional de Cuba v. Sabbatino*, 376 U.S. 398, 431-33 (1964); Restatement of the Foreign Relations Law of the United States, § 443, comment a (1987). For an American court to say to Iran, "We won't pay any attention to your seizure of the Consulting Firm without compensation to the owners, because it's the sort of act that is abhorrent to Americans," would be a slap in the face of the Iranian regime. Such slaps would be frequent if the happenstance of being owed money by an

American was enough to waive the act of state doctrine. It is true that the government of Iran is not a party to this suit, but we said slap in the face, not slap in the pocketbook—and there could be that too, because the liquidators appointed by the government have a potential claim against Harza as the successors to the owners of the Consulting Firm, although it seems unlikely that the claim will ever be pressed.

Granted, the slap would sting no less sharply if the Consulting Firm had had assets in the United States or of its contract with Haza had contemplated transactions between the U.S. and Iran rather than wholly within Iran; and considerations of territoriality may seem as anachronistic as they are elusive as a guide to the boundaries of the act of state doctrine. But the United States has an independent concern with protecting property and transactions (perhaps even contemplated transactions, as in the two Second Circuit cases) within its borders; that is the interest which underlies the extraterritorial exception to the act of state doctrine. That interest is not present here. Despite the possibility (no more than that, for Harza does not concede its indebtedness, and the liquidators may still make a claim against it) of a windfall for Harza, we do not believe ourselves to be authorized to disregard an act of the Iranian state against an Iranian firm the contemplated and actual operations of which were confined to Iran, which had no assets outside of Iran, and which was seized in Iran pursuant to locally valid Iranian law.

AFFIRMED.

A true Copy:

Teste:

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Clerk of the United States Court of Appeals for the Seventh Circuit

UNITED STATES COURT OF APPEALS
FOR THE SEVENTH CIRCUIT
CHICAGO, ILLINOIS 60604
August 17, 1989

Before
HON. HARLINGTON WOOD, JR., Circuit Judge
HON. RICHARD A. POSNER, Circuit Judge
HON. JESSE E. ESCHBACH, Sr. Circuit Judge

No. 88-3133

F & H.R. FARMAN-FARAIAN CONSULTING ENGINEERS FIRM and FAROUGH FARMAN-FARMAIAN,
Plaintiffs-Appellants,

vs.

HARZA ENGINEERING COMPANY,
Defendant-Appellee.

Appeal from the No. Dist of IL., East. Div.
87-C 1599—James B. Parsons, Judge

JUDGMENT—ORAL ARGUMENT

This case was heard on the record from the United States District Court for the Northern District of Illinois, Eastern Division, and was argued by counsel.

On consideration whereof, IT IS ORDERED and ADJUDGED by this Court that the judgment of the said District Court in this cause appealed from be, and the same is hereby, AFFIRMED, with costs, in accordance with the opinion of this Court filed this date.

UNITED STATES COURT OF APPEALS
FOR THE SEVENTH CIRCUIT
CHICAGO, ILLINOIS 60604

September 20, 1989

Before
HON. HARLINGTON WOOD, JR., Circuit Judge
HON. RICHARD A. POSNER, Circuit Judge
HON. JESSE E. ESCHBACH, Senior Circuit Judge

No. 88-3133

F. & H.R. FARMAN-FARMAIAN CONSULTING ENGINEERS FIRM and FAROUGH FARMAN-FARMAIAN,
Plaintiffs-Appellants,

v.

HARZA ENGINEERING COMPANY,
Defendant-Appellee.

Appeal from the United States District Court
for the Northern District of Illinois, Eastern Division
No. 87 C 1599—James B. Parsons, *Judge*

ORDER

On August 30, 1989, plaintiffs-appellants filed a petition for rehearing. All of the judges on the original panel have voted to deny the petition. The petition is therefore DENIED.

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF ILLINOIS
EASTERN DIVISION

Case Number 87 C 1599
(Judge Parsons)

F. & H. R. FARMAN-FARMAIAN CONSULTING, *et al.*

v.

HARZA ENGINEERING CO.

JUDGMENT IN A CIVIL CASE

☐ Jury Verdict. This action came before the Court for a trial by jury. The issues have been tried and the jury has rendered its verdict.

☒ Decision by Court. This action came to trial or hearing before the Court. The issues have been tried or heard and a decision has been rendered.

IT IS ORDERED AND ADJUDGED that defendant's motion to dismiss the complaint is granted.

Date Sept. 30, 1988

H. STUART CUNNINGHAM
Clerk

/s/ R. M. McGhee
R. M. MCGHEE
(By) Deputy Clerk

IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF ILLINOIS
EASTERN DIVISION

No. 87 C 1599

F. & H. R. FARMAN-FARMAIAN CONSULTING, *et al.*,
Plaintiffs,

vs.

HARZA ENGINEERING COMPANY,
Defendant.

MEMORANDUM OPINION AND ORDER

Plaintiffs' complaint causes this court to revisit the time in 1979 of a dramatic upheaval in Iran—the Iranian revolution against the Imperial Government of the Shah of Iran. Vestiges of that revolution remaining today, nine years later, are apparent in uncertain diplomatic relations between the United States and the Islamic Republic of Iran. Similarly, financial interest of United States citizens and Iranian citizens doing business in Iran at the time of the revolution have not survived unscathed. It is from these changes in business relations between the citizens of the two countries that this dispute arose.

Plaintiffs are Iranian citizens who left Iran following the revolution. They are the former stockholders of F. & H.R. Farman-Farmaian Consulting Engineering Firm (the F-F firm), an Iranian corporation. The F-F firm was engaged by the defendant, a United States engineering corporation with its principal offices here in Chicago, as a subcontractor on the engineering and construction of projects to be erected in Iran.

Plaintiffs came to Chicago to file this complaint against the defendant alleging a breach of contract and unjust

enrichment with regard to work which the F-F firm performed, but for which it was never compensated, under an agreement it had with the defendant. The defendant has moved to dismiss the complaint, or in the alternative for summary judgment, on the basis that Mr. Farough Farman-Farmaian, the managing director of the F-F firm who also brings this suit on behalf of the former stockholders of the F-F firm, lacks capacity to sue in the name of the F-F firm. Because the parties have tendered affidavits and other evidence, I must treat this as a motion for summary judgment. Fed. R. Civ. Pro. 12(b). Accordingly, having reviewed all materials submitted, I find that no genuine issue of a material fact exists precluding my entry of a summary judgment.

FACTS

In the 1960's Harza Engineering Company (Harza) contracted with the government of Iran to provide engineering services for major water and power projects on the Marun and Karun Rivers of Iran. Harza was the prime contractor on these projects, but pursuant to the contract with the Iranian government Harza was required to associate with an Iranian firm. Harza selected the F-F firm as its engineering associate.

Farough Farman-Farmaian (Farough) and Haroon Rashid Farman-Farmaian (Rashid), Iranian citizens and brothers, served as Managing Director and Chairman of the Board, respectively, and along with their families they held all of the stock in the F-F firm. The services the F-F firm was to provide under its Collaboration Agreement with Harza included representing Harza in negotiations with the Iranian government, providing local staff and facilities based at regional offices, and performing emergency services in the Teheran offices. All of the work for which Harza engaged the F-F firm was to be performed in Iran; however, Farough did on occasion visit Harza's offices in Chicago to discuss the progress on the projects or financial matters related thereto.

Work on these various projects continued throughout the 1970's. In 1978, Farough left Iran just prior to the revolution and because of the politics of the revolutionary government he has never returned. Rashid remained in Iran during the revolution and continued operating the F-F firm during the revolution and continued operating the F-F firm [sic] until he was arrested and imprisoned by the new government in 1979.

In 1979 the revolutionary government enacted the Temporary Director Act providing that the former directors of a company cease to have power to manage the company upon the appointment of a temporary director. The act applied to consulting engineering companies, among others, whose directors had either abandoned the company or whose directors could not be reached or those companies where work had been suspended. Pursuant to this act, the government, beginning on August 6, 1979, appointed a series of temporary directors for the F-F firm. These directors were vested with the full and exclusive authority to manage the affairs of the F-F firm.

Subsequently, in 1980, the government enacted an "Act Concerning the Management and Ownership of Shares of Contracting and Consulting Firms" (the 1980 Act), which authorized a cabinet-level commission to determine which consulting companies served continued purposes and which companies should be dissolved. This commission decided the F-F firm was among those companies which should be dissolved and therefore appointed a Board of Liquidators for that purpose in January 1982. Under Iranian law, during the period that the F-F firm is in liquidation proceedings, the Board of Liquidators has full and exclusive authority over the F-F firm, including all rights to bring lawsuits on its behalf. Neither the equity owners of the company nor the former directors have any authority to act on the company's behalf.

After Rashid was released from jail in 1983, he continued to reside in Iran until his departure in 1987.

Prior to his departure, however, Rashid inquired of the government as to the ownership and status of the F-F firm. In 1986, the Iranian Ministry of Justice informed Rashid that the F-F firm had been legally dissolved and a Board of Liquidators had been appointed.

Harza had ceased its operations in Iran in 1980 because the Iranian government failed to pay Harza for services rendered on the engineering projects. In 1986, Harza received an award from the Iran-United States Claims Tribunal for certain services rendered, which included, in part, payment for the services the F-F firm had rendered on Harza's behalf on these projects. Farough instituted this suit in this court against Harza on behalf of the F-F firm and all former shareholders seeking that portion of the sum which Harza had received from the tribunal that represented payment for the F-F firm's services, as well as other additional sums allegedly due the F-F firm.

DISCUSSION

The parties do not dispute this sequence of events and the actions which the revolutionary government took against the F-F firm. The only question is whether these actions divested Farough of his capacity to sue on behalf of the F-F firm. On this issue the parties have submitted affidavits from experts in Iranian law and not surprisingly these experts differ in their interpretation of the laws promulgated by the revolutionary government. These differences in the interpretation of Iranian law do not, however, present any issue of fact precluding summary judgment since questions of foreign law are to be determined by this court as a matter of law after it has had an opportunity to review the relevant foreign law along with any other material that could be submitted by the parties. Fed. R. Civ. Pro. 44.1.

Farough's expert provides an interpretation of the relevant Iranian law that would permit Farough to bring this action as a party authorized to act on behalf of the

F-F firm. This interpretation is based on two contentions. Farough's expert first contends that the 1979 Temporary Director's Act and the 1980 Act permitting the Commission to dissolve the F-F firm and to appoint a board of liquidators did not divest Farough of his authority to act for the F-F firm. Second, these laws were in contravention of the Iranian Constitution and the Iranian government subsequently in 1984 and in 1987 nullified these laws and any actions taken by the government pursuant to them. My reading of these laws does not comport with this interpretation.

The language of the temporary Director's Act and the 1980 Act makes clear that the former directors are disqualified from managing the companies' affairs, and the acts vest *all* authority and managerial powers in the Temporary Director or Board of Liquidators, subject only to governmental approval on some matters.[1] See "Act Concerning the Appointment of a Temporary Director or Directors for the Supervision of Production, Industrial, Commercial, Agricultural and Service Units whether in the Public or Private Sectors," Articles 2, 3; Commercial Code of Iran, Articles 208, 211, 212; *See also Tchacoch* [sic] *Company Ltd. v. Rockwell International Corp.*, 766 F.2d 1333, 1335 (9th Cir. 1985). Pursuant to these laws Farough is divested of all managerial authority and lacks capacity to bring this suit on behalf of the F-F firm.

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[1] Article 2 of the Temporary Directors Act provides in part:

> Upon issuance of the said order [of appointment of a temporary director] . . . the former director or persons in charge shall be disqualified from managing the affairs of the unit.

Similarly, Article 3 states that the temporary directors "[a]re in every respect, but without the right of delegation, the legal successors of the original directors of the units, companies, and organization described in Article 1, and hold all the necessary authority for the administration thereof in the ordinary course of business.

Farough notes, however, that these laws should not have applied to the F-F firm since the conditions precedent which would have triggered their application to the F-F firm, e.g., insolvency and abandonment by the directors, were not satisfied under the facts. But that matter is not an issue properly to be disposed of by this court. If Farough disputes the legitimacy of the government's actions with respect to the F-F firm, mechanisms exist by which he may challenge the propriety of those actions in Iran. Significantly, Farough does not dispute that the government has in fact appointed temporary directors and a board of liquidators. In any event, the legal import of that action is the only issue for determination and I conclude that Farough was divested of his authority as a result of these actions.

The second challenge presented by Farough's expert is a frontal attack on the validity of these laws which the revolutionary government enacted and on the legality of the actions taken pursuant to these laws. Prior to the revolution, Iran's constitution, enacted in 1906 and supplemented in 1907, provided that Iranian citizens are entitled to be free from interference from the government in their lives and in their possession of property. The Iranian constitution enacted after the revolution preserved this right in their citizens subject to when "the law provides otherwise." Article 4 of this 1979 Constitution describes broadly those instances in which the government may confiscate property.[2] A difference of interpre-

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[2] Article 49 of the 1979 Constitution provides in relevant part:

"The government shall seize wealth derived from usury, usurpation, bribery, embezzlement, theft, gambling, misappropriation of endowments, misuse of government contracting and transactions, sale of wastelands and unowned properties, operation of centers of corruption, and other illegitimate [non-Islamic] cases and shall return such wealth to its proper owner. In cases where the proper owner is unknown, the Government shall submit the wealth to the treasury. The present command shall be carried out by the govern-

tation between the parties exist over whether Article 49 of the constitution was self-executing thereby permitting the government to confiscate or expropriate property, or whether some legislative directive was first required before the government could act as it did in 1979.

Farough's expert contends that any expropriation pursuant to Article 49 required separate legislative approval and that this was not sought for those actions in 1979 which deprived Farough and his family of their interest in the F-F firm. Farough buttresses this argument by reference to a 1984 legislative enactment entitled "An Act Concerning the Implementation of Principle 49 of the Constitution of the Islamic Republic of Iran" wherein the act specifies the procedures by which the government through the state's prosecution in the courts may confiscate property for the public benefit. This act also states how parties whose property has been confiscated may lodge complaints and seek the return of their property. Farough reasons that since the actions in 1979 were not done pursuant to this later legislation they were invalid. Only the Act of 1984 provided the government with a legal basis on which to confiscate or expropriate property.

This reasoning, however, ignores the actions of the revolutionary courts of Iran between the years 1979 and 1984. Throughout those years the Council of the Revolution expressly recognized and confirmed the actions taken by the Revolutionary Courts in confiscating properties such as the F-F firm. The 1984 Act was merely another in a series of legislative enactments that recognized the authority of the Revolutionary Courts to expropriate private property. The 1984 Act did not invalidate any of the expropriations that had been decreed by the Revolutionary Courts prior to it. The only substantive addition to the existing laws resulting from the adoption of the 1984 Act has been a process by which persons who believe that

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ment upon proper investigation, verification and proof according to divine [Islamic] law."

their property was improperly expropriated may petition to have their property restored to them. However, providing for such a petition process did not itself invalidate any of the expropriations that had previously occurred. Those expropriations remain valid until they are set aside by some new court decree as a result of some new judicial proceeding. It is not disputed that since the adoption of the 1984 Act plaintiffs have not sought any order through the Iranian courts to have the expropriation decree declared invalid.

I find that the adoption of the 1984 Act was consistent with the actions that had been taken by the Revolutionary Courts, and I can find no reasonable basis for belief that the 1984 Act was ever intended to invalidate all prior expropriations. This interpretation of the 1984 Act is consonant with subsequent actions taken by the Iranian government. In June of 1985, a new liquidator for the F-F firm was formally appointed by the government to complete the liquidation of the F-F firm. And, in September of 1986, in reponse to the inquiry from Rashid the government certified that the F-F firm had been dissolved and its liquidators appointed. This position was reaffirmed as recently as June of 1988 when the Iranian government again certified that the F-F firm was in liquidation. This pattern of consistent affirmation that the F-F firm was dissolved and is in the process of liquidation refutes any suggestion that the government now considers invalid any expropriation by the Revolutionary Courts that had occurred before the enactment of the 1984 Act.

Similarly, I also find the claim that recent events in Iran alter the status the plaintiffs' rights relative to the F-F firm to be without merit. Farough's expert contends that directives issued in 1987 by the President of Iran and his cabinet regarding the rights of individuals in expropriated property evidence the government's concern and fundamental respect for private property and there-

fore actions taken by the Revolutionary Courts are invalid. The directives to which plaintiffs' expert refers, however, do not apply to the law under which the F-F firm was expropriated. The F-F firm was placed in liquidation under the Act concerning the Management and Ownership of the Share of Contracting and Consulting Companies. The opinions and directives plaintiffs rely upon do not refer to expropriation made under this act but refer instead to expropriations made under other laws. Consequently, the contention that the government has retreated from the expropriation of the F-F firm and similar action under law is plainly unsupported by the record. The laws the Iranian government promulgated after the revolution provide a comprehensive framework by which the government could seize and manage business such as the F-F firm. I find no internal conflict between these laws, and there is nothing in their provisions to suggest that the expropriation of the F-F firm was done without authority or in violation of the Iranian Constitution. Accordingly, under the present laws in Iran, I must find that Farough and the former officers of the F-F firm have been divested of their authority to bring suit on behalf of the firm, and that they lack standing to maintain this action.

Even if the expropriation decree failed to comply with the formal requisites of Iranian law, this court nonetheless must recognize the sovereign power of Iran and accord its actions deference. The Act of State doctrine which received its classic expression in *Underhill v. Hernandez*, 168 U.S. 250 (1897), requires this.

> Every sovereign state is bound to respect the independence of every other sovereign state, and the courts of one country will not sit in judgment on the acts of the government of another, done within its own territory. Redress of grievances by reason of such acts must be obtained through the means open

> to be availed of by sovereign powers as between themselves.

Id. at 252.

The Act of State doctrine operates as an issue preclusion device foreclosing a court's inquiry into the validity of propriety of a foreign government's acts. *See Arango v. Guzman Travel Advisors Corporation*, 621 F.2d 1371, 1380 (5th Cir. 1980). Farough, however, urges this court to refuse to give effect to the Iranian decree because it is in conflict with this nation's public policy against confiscations of private property without compensation.

In *Banco Nacional de Cuba v. Sabbatino*, 376 U.S. 398, 428 (1964), our Supreme Court crafted a corollary to the Act of State doctrine, a principle which directs that courts of the United States need not give extraterritorial effect to a confiscatory decree of a foreign state, even against its own nationals, where the situs of the affected property is the United States. The Court limited the Act of State doctrine to takings of property "within its own territory by a foreign sovereign government," *id.*, and if the property is located in United States territory at the time of confiscation, our courts will given effect only if the act of confiscation is consistent with the policy and law of the United States. *See Callejo v. Bancomer S.A.*, 764 F.2d 1101, 1121 (5th Cir. 1985); *Republic of Iraq v. First National City Bank*, 353 F.2d 47, 51 (2d Cir. 1965) *cert. denied*, 382 U.S. 1027 (1966). Because taking of property without just compensation is "shocking to our [this nation's] sense of justice," *see Republic of Iraq*, 353 F.2d at 51, and denies a person the full measure of due process that we so richly prize in this country, Farough argues that this court should refuse to give effect to the Iranian decree divesting him of control over the F-F firm.

This argument was expressly rejected under similar circumstances in *Tchacosh Company Ltd. v. Rockwell In-*

ternational Corporation, 766 F.2d 1333 (9th Cir. 1985), where Tchacosh, an Iranian corporation which had been expropriated by the government, sought to recover from Rockwell on a contract claim for services rendered on a subcontract performed in Iran. After first finding that the plaintiff lacked authority under Iranian law to bring the suit, the court of appeals considered whether the Iranian decree should be given extraterritorial effect in this country. Tchacosh argued that the situs of the contract claim was the United States and therefore the Iranian decree expropriating the firm need not be given effect in this country. The court of appeals rejected this approach because it found that at the time of the expropriation Rockwell held no assets or property of Tchacosh's in the United States and it could not be said that the United States was the situs of the property expropriated. The only connection that the relationship between the parties had to the United States was that the defendant was located here. *Id.* at 1338-39.

I find the facts in the present case are not so different that they mandate a different conclusion here. The subcontract between Harza and the F-F firm contemplated that all services would be performed in Iran, all invoices from the F-F firm would be sent to Harza's office in Teheran with copies to the Chicago office, and all payments to the F-F firm would be in rials and made through Iranian banks. During the course of the relationship only minor modifications of these arrangements occurred. Farough pressed to have a small portion of the payments made in dollars and attributed this to "work outside Iran" presumably so he could avoid Iranian tax on the payments. Farough also made infrequent trips to Harza's offices in Chicago for brief discussions on the progress being made on the various projects. These appearances at Harza's Chicago office were not at Harza's request. Apparently they were timed to allow at the same time visits by Farough with his children who were residing here in the United States. But all financial records relat-

ing to payments in rials to the F-F firm were maintained in Harza's office in Iran. The largest proportion of compensation paid to the F-F firm was in rials and the payments were made to him through the Iranian banks in which Harza maintained banking accounts.

While the relationship between the parties necessarily has some contacts with the United States since Harza itself is based here in Chicago, all of the functional elements of the relationship were centered in Iran. As in *Tchacosh*, Iran was in a position to "perform a fait accompli" over the payment or receipt of any money owed the F-F firm by Harza. *Tchacosh*, 766 F.2d at 1338 (citing *Tabacalera Severiano Jorge, S.A. v. Standard Cigar Company*, 392 F.2d 706, 715 (5th Cir.), *cert. denied*, 393 U.S. 924 (1968).

Farough cites to us a number of cases in which United States courts have refused to give effect to confiscatory decrees issued by foreign sovereigns, but these cases discuss claims and expropriated property under facts that are quite dissimilar to the facts here. *See, e.g., United Bank Ltd. v. Cosmoc* [sic] *International, Inc.*, 542 F.2d 868 (2d Cir. 1976) (goods sold by a foreign firm and delivered in the United States before the foreign firm was expropriated); *Republic of Iraq, supra*, (bank account and custodial securities account established in a United States bank before expropriation decree issued); *Zwack v. Kraus Brothers and Company*, 237 F.2d 255 (2d Cir. 1956) (United States trademark rights acquired by a foreign firm prior to its expropriation). In all of such cases, the underlying transaction that gave rise to the debt occurred in the United States. Even a most recent decision of the Second Circuit Court of Appeals in *Bandes v. Harlow and Jones*, 1988 WL 77056 WESTLAW (2d Cir. 1988), a case which Farough argues should be given considerable attention by this court, involved a fund that existed in the United States prior to the issuance of the expropriation decree.

None of the cases on which Farough relies involves a contract claim for services rendered by a foreign corporation in a foreign country, which claim accrued *after* the issuance of the expropriation decree. As Harza notes, under the agreement, the F-F firm was not entitled to receive payment for its services until Harza first received payment from the Iranian government. At the time of the expropriation decree Harza had not been paid and did not receive payment until 1986. Thus at the time of the expropriation the F-F firm's entitlement to compensation for its services did not mature until *after* the expropriation and *after* the F-F firm was controlled by the government. I find little difference between this and those cases wherein the claim for which payment is sought was created by the shipment of goods *after* the expropriation occurred. In those cases, the claim is deemed to belong to the expropriated company that shipped the goods. *See Sabbatino, supra; F. Palicio v. Compania, S.A. v. Brush*, 256 F. Supp. 481 (S.D.N.Y. 1966), *aff'd. mem.* 375 F.2d 1011 (2d Cir.), *cert. denied*, 389 U.S. 830 (1967)

The principles underlying the Act of State doctrine require that it be invoked under the circumstances of this case. The United States has no connection to the relationship between the parties except that Harza has an office here. The contract claim on which Farough sues matured entirely in Iran after the expropriation of the F-F firm. In Iran there presently exist means by which this dispute may more appropriately be resolved. "When a foreign government performs an act of state which is an accomplished fact, that is when it has the parties and the res before it and acts in such a manner as to change the relationship between the parties touching the res, it would be an affront to such foreign government for courts of the United States to hold that such act was a nullity." *Tabacalera*, 392 F.2d at 715. Under the circumstances, I am compelled to find the Iranian decree expropriating the F-F firm must be accorded deference.

I conclude therefore that, since at the time of the Iranian decree, Harza had no property or assets of the F-F firm within the United States, and since under it the government of Iran acquired all rights to claim or sue for property or assets owed by Harza to the F-F firm arising from the subcontract for services in Iran, in accordance with the Act of State doctrine, the Iranian decree divesting Farough and all the F-F firm's former stockholders of authority to bring this suit on behalf of the F-F firm, will have to be given effect. Defendant's motion to dismiss the complaint will have to be allowed. And it is so ordered.

ENTER:

/s/ James B. Parsons
JAMES B. PARSONS
United States District Court Judge

Dated: September 30, 1988